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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,776	04/05/2001	John Erik Hershey	RD-24,495	1295
41838	7590	03/07/2006	EXAMINER	
GENERAL ELECTRIC COMPANY (PCPI) C/O FLETCHER YODER P. O. BOX 692289 HOUSTON, TX 77269-2289			LUGO, DAVID B	
		ART UNIT	PAPER NUMBER	
			2637	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/825,776	HERSHEY ET AL.	
	Examiner David B. Lugo	Art Unit 2637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 December 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-7 is/are allowed.
- 6) Claim(s) 8-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 12/13/05 have been fully considered but they are not persuasive. Regarding the rejection of claims 8-20, Applicant argues that the transmitter in the system of Scott is physically different than the transmitter recited in the claims, as it is not configured to transmit a colored noise-like preamble. Applicant states the Examiner has provided no basis whatsoever for assuming that the transmitter as disclosed by Scott '980 or Scott '373 could transmit a colored noise-like preamble absent a complete reconfiguration (i.e., physically modifying) of the Scott device. The Examiner respectfully disagrees.

Each of the claims at issue recites a system comprising "a transmitter configured to transmit a colored noise-like preamble." An example of the claimed transmitter is shown as transmitter 170 of Figure 1. As indicated in the previous Office action, Scott '980 and '373 both disclose a transmitter configured to transmit a preamble. As described in Scott '980, column 19, lines 16-21 and shown in Figure 9, transmitter 907 receives data to be transmitted from a data interface 905, modulates the data for communication and transmits the data, where a preamble 577 is included in each time slot (col. 20, lines 57-61). Thus, the transmitter receives whatever data is supplied to it from the data interface, including preamble information, modulates the data, and transmits the data via antenna 908 (col. 19, lines 25-26). Applicant states in the last paragraph on page 10 of the arguments filed 12/13/05 that, although in theory, the device disclosed by Scott may be capable of transmitting signals in general, nowhere do the references suggest that the transmitter is capable of transmitting a colored noise-like preamble. However, it is the Examiner's position that the configuration of the transmitter does not change even if the

data supplied to the transmitter changes. It will merely modulate the data supplied to it and provide the modulated data to the antenna for propagation through the communication medium, just as transmitter 170 of Figure 1 will drive an antenna 180 with a signal supplied to it, regardless of the data supplied (instant application: page 4, lines 16-18 and 20-22).

Applicant further states that, analogous to *In re Alappat*, where it was stated that “a general purpose computer in effect becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software,” the transmitter of claims 8, 14 and 19 is “a special transmitter as it is programmed to perform one particular function.” However, the claimed transmitter is not recited as being a computer having program software, where the program software code in conjunction with the computer would be considered a special purpose computer. That is, the software would be considered a component of the apparatus in conjunction with the computer. In the claims of the instant application, there are no software program components which are part of the system or transmitter. The statement in the above noted case is not considered to be applicable to the claimed transmitter. Further, in the case of *In re Alappat*, the issue was whether the Board erred by refusing to apply 35 USC 112, paragraph six, to the means plus function limitations at issue in determining whether the claims constitute patentable subject matter pursuant to 35 USC 101. This situation is vastly different from the issues of the present application, where there is no dispute as to the statutory class of invention.

Claims 8-20 are drawn to a system and are apparatus claims. It is noted that apparatus claims cover what a device is not what a device does, as the apparatus must be distinguished from the prior art in terms of structure rather than function (see MPEP 2114). In the instant

application, the claims are recited as being “configured to” perform a particular function. The structure of the claimed transmitter is a transmitter as understood by a person having ordinary skill in the art, and the function of the transmitter is to transmit a colored noise-like preamble. As indicated above, the transmitter of Scott is configured to transmit a preamble, where the configuration of the transmitter would not change if the preamble were different (such as being a colored noise-like preamble). Scott is thus considered to disclose a system as claimed having a transmitter considered to be capable of transmitting a colored noise-like preamble. Further, the preambles of Scott may be broadly considered colored noise-like preambles, as understood by a person having ordinary skill in the art.

The rejection of claims 8-20 is maintained and is restated below.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 8, 11-13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott U.S. Patent 5,959,980.

Regarding claim 8, Scott discloses a communication system where a transmitter 907 (Fig. 9) is configured to transmit a preamble 579 (Fig. 5C), broadly considered a colored noise-like preamble, the transmitter considered capable of and configured to transmit a colored noise-like

preamble, a receiver 809 (Fig. 8A) for receiving the preamble, and including an antenna 808, where there is an adjustment interval that permits adjustments to a directional antenna (col. 22, lines 57-63), and the receiver measures the strength of the preamble (col. 29, lines 17-20).

Regarding claim 11, the transmitter and receiver are considered capable of transmitting and receiving a colored noise-like preamble composed of interleaved sequences of samples of colored noise.

Regarding claims 12 and 13, Scott discloses use of the communication system in air interfaces including the ISM band (col. 48, lines 48-55), and thus, the transmitter and receiver are considered an ISM transmitter and ISM receiver, respectively.

Regarding claim 19, Scott discloses a communication system where a transmitter 907 (Fig. 9) is configured to transmit a preamble 579 (Fig. 5C), broadly considered a colored noise-like preamble, the transmitter considered capable of and configured to transmit a colored noise-like preamble, a receiver 809 (Fig. 8A) for receiving the preamble, and including an antenna 808, where the receiver determines, in response to the strength of the preamble, the direction or distance of a user station (col. 29, lines 12-20), and based on the determined direction or distance made in response to the strength of the preamble, the receiver may adjust its antenna to direct it towards the user station during an antenna adjustment interval (col. 29, lines 21-24).

4. Claims 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Scott U.S. Patent 6,141,373.

Regarding claim 14, Scott teaches a communications system (Fig. 1) where a transmitter sends a preamble 901 (Fig. 9) to a receiver, the transmitter configured to transmit a preamble, broadly considered a colored noise-like preamble, the transmitter considered capable of and

configured to transmit a colored noise-like preamble, and the receiver receives the preamble and is disclosed as performing diversity combining, where a function of the transmitted preamble code is used to allow multiple antenna paths for use by a demodulator (col. 48, lines 55-60).

Regarding claims 15 and 16, the diversity combining is considered to be used to mitigate interfering signals and enhance reception of the preamble.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott U.S. Patent 5,959,980 in view of Keen U.S. Patent 4,388,723.

Regarding claim 9, Scott discloses a communication system as described in relation to claim 8 above, but does not disclose that the antenna pattern comprises a spatial null adapted to be oriented electronically.

Keen disclose the use an antenna pattern that produces a spatial null, which may be determined electrically (col. 2, lines 58-64).

It would have been obvious to one of ordinary skill in the art to employ an antenna pattern that produce a spatial null in the system of Scott as such antennas produce a very large rejection of unwanted signals (col. 2, lines 61-62).

Regarding claim 20, Scott discloses a communication system as described in relation to claim 19 above, where an antenna is adjusted based on preamble strength, but does not expressly disclose that the antenna pattern comprises a spatial null adapted to be oriented electronically.

Keen disclose the use an antenna pattern that produces a spatial null, which may be determined electrically (col. 2, lines 58-64).

It would have been obvious to one of ordinary skill in the art to employ an antenna pattern that produce a spatial null in the system of Scott as such antennas produce a very large rejection of unwanted signals (col. 2, lines 61-62).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scott U.S. Patent 5,959,980 in view of Bunch et al. U.S. Patent 4,121,216.

Regarding claim 10, Scott discloses a communication system as described in relation to claim 8 above, but does not disclose that the processor is adapted to implement an arc sine law.

Bunch et al. disclose an “ARC SIN” converter that produces a true bearing angle signal (col. 8, lines 13-15).

It would have been obvious to one of ordinary skill in the art to adapt the processor to implement an arc sine law in order to produce a true bearing angle signal for aid in adjusting the direction of the antenna.

8. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott U.S. Patent 6,141,373 in view of Scott U.S. Patent 5,959,980.

Regarding claims 17 and 18, Scott ‘373 discloses a communication system as disclosed in relation to claim 14 above, but does not expressly disclose use of the system in an ISM system.

Scott '980 discloses use of a communication system in air interfaces including the ISM band (col. 48, lines 48-55), where the transmitters and receivers are considered ISM transmitters and ISM receivers, respectively.

It would have been obvious to one of ordinary skill in the art to use the system of Scott '373 in air interfaces including the ISM band since this band is unregulated and therefore avoids the costly need to acquire and license spectrum.

***Allowable Subject Matter***

9. Claims 1-7 are allowed.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Lugo whose telephone number is 571-272-3043. The examiner can normally be reached on M-F; 9:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on 571-272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Lugo  
2/24/06

  
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SUPERVISORY PATENT EXAMINER